12271

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOBB/LSC/2017/0054**
Property	:	**Leasehold premises in the Forest Gate area of the London Borough of Newham**
Applicant	:	**30 Leaseholders in Newham London E15**
Representatives	:	**In person by Ms Muna Al-Ali**
Respondent	:	**The Mayor and Burgesses of the London Borough of Newham**
Representative	:	**Mr Nicholas Grundy QC of Counsel**
Type of Application	:	**For the determination of the liability to pay and reasonableness of service charges (s.27A Landlord and Tenant Act 1985) AND Application for the dispensation of consultation requirements pursuant to S. 20ZA of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Prof Robert M. Abbey (Solicitor)** **Mr Peter Roberts (Professional Member; Architect)** **Mr Clifford Piarroux (Lay Member)**
Date and venue of Hearing	:	**5-6 June 2017 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**28 June 2017**

DECISION

Decisions of the tribunal

(1) The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (Section 20ZA of the same Act).

(2) The tribunal determines that the service charges for the properties are payable as follows.

(3) All service charges as demanded are payable save as more particularly limited below:-

1. Entrance door works

Major works costs as shown in the final account invoice under internal communal works - reduced by £250 per lessee affected by the duplication of repairs charged.

2. Window works to individual flats

Service charges for each property as shown in the final account invoice - there is to be a reduction of 75% from the property specific costs for window works.

(4) The reasons for our decisions are set out below.

The applications

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charge payable by the applicants in respect of several service charges payable for services provided for various properties in the Forest Gate area of the London Borough of Newham, (the properties) and the liability to pay such service charge.

2. The respondent seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act, (see the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987), Schedule 4.) The request for dispensation concerns major works ("the major works") carried out to 19 Eric Close London E7 0AY ("the property.") where the applicant lessee is Mr Leonard Tawonezvi.

3. The relevant legal provisions and rules and appeal rights are set out in the Appendix and Annex to this decision.

The hearing

4. The applicants were self-represented with the assistance of Ms Muna Al-Ali one of the lessees, (44 Hatfield Road Stratford London E15 1QY), and the respondent was represented by Mr Nicholas Grundy Q.C. of Counsel.

5. The tribunal had before it a trial bundle of documents prepared by the one of the parties in accordance with previous directions. The trial bundle comprised 12 ring binders of copy deeds, contracts, documents, letters and emails. Additional copy paperwork was made available to the tribunal on the day of the hearing that was seen and approved by all parties and therefore added to the trial bundle.

The background and the issues

6. The properties which are the subject of this application comprise various different units within the Forest Gate locality in the London Borough of Newham. The units are let on long leases following right to buy elections by the applicants or their predecessors in title.

7. One party suggested an inspection might assist but the tribunal did not consider that an inspection was necessary in the light of the detailed and extensive paperwork in the trial bundle; nor would it have been proportionate to the issues in dispute and of course bearing in mind the number of different and differing properties involved.

8. The applicants/tenants hold long leases of the units which require the respondent/landlord to provide services and the tenant to contribute towards their costs by way of a service charge. The applicant tenants must pay a percentage defined in their leases for the services provided.

9. The issues the applicant raised covered the reasonableness and payability of the charges raised for the major works listed in the tribunal application and carried out by the respondent. The applicants consider that the service charge items are excessive, not payable or unreasonable. The major works were carried out in 2009/2010 and the demands for service charge payments were made of the lessees in April 2015.

10. A second application (dealt with first at the hearing) was also considered by the tribunal. This was following prior directions that the two interlinked applications be heard together . The second application this time made by the respondent was made to seek dispensation under section 20ZA of the 1985 Act from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act carried out to one relevant property (19 Eric Close London E7) where the applicant lessee is Mr Leonard Tawonezvi.

The dispensation issues and decision

11. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether or not service charges will be reasonable or payable.

12. Having heard evidence and submissions from Muna Al-Ali on behalf of Mr Tawonezvi and Mr Grundy and having considered all of the copy deeds documents and legal submissions provided by both parties, the Tribunal determines the issue as follows.

13. Section 20 of the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.

14. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by such an application as is this one before the Tribunal. Essentially the Tribunal have to be satisfied that it is reasonable to do so.

15. The works carried out by the respondent originated in the Forest Gate PFI contract. This contract was potentially a contract caught by the consultation requirements. In fact the contract was advertised in the Official Journal of the EU on 10 October 2002 while the amended s 20 and new s20 ZA came into substantive effect on 31 October 2003. Regulation 3(3) of the 2003 Regulation mentioned above in effect confirms that a contract, if it was advertised in the Official Journal prior to the coming into force of the 2003 Regulations, will not be caught by the consultation provisions. Consequently there were no consultation requirements for the Forest Gate PFI contract. However the major works being the subject of the application to the tribunal were caught by the consultation provisions.

16. The consultation requirements are set out in Schedule 3 of the 2003 Regulations and require a notice of intention setting out the works in general terms and inviting observations and then the consideration of and response to any such observations. The landlord asserted that by a letter dated 16 November 2007 the London Borough of Newham gave its notice of intention to enter into the Forest Gate PFI contract and then by a further letter dated 1 June 2012 notice was given of intended works to the controlled door entry system. The leases contained a provision regarding section 196 of the Law of Property Act 1925 to the intent that notices will be covered by this statutory provision. This provision in the act states that:-

s.196 Regulations respecting notices.

(1)Any notice required or authorised to be served or given by this Act shall be in writing.

(2)Any notice required or authorised by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

(3)Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorised to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4)Any notice required or authorised by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered....

17. The local authority relies upon this provision with regard to the service of notices required by statute or the lease. In effect it allows the landlord to hand deliver notices. It is also the respondent's evidence that non-resident leaseholders were also sent a copy of relevant notices by recorded delivery post.

18. The local authority accepts that Mr Tawonezvi was not included in the consultation process because they say he is an under lessee of 19 Eric Close London E7. However, the landlord accepts that he was entitled to be consulted with. The lease of this property is held by Notting Hill Home Ownership Limited and that company granted an under lease in 2003 and subsequently Mr Tawonezvi became the registered proprietor of the property in December 2005.

19. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14 by a majority decision (3-2), the Supreme Court considered the

dispensation provisions and set out guidelines as to how they should be applied.

20. The court came to the following conclusions:

    a. The correct legal test on an application to the Tribunal for dispensation is:
    "Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord's failure to comply with the requirements?"

    b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.

    c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord's failure to comply.

    d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.

    e. The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

    f. The onus is on the leaseholders to establish:

        i. what steps they would have taken had the breach not happened and

        ii. in what way their rights under (b) above have been prejudiced as a consequence.

21. Accordingly the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the lessor and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above. It is for the tenant (Mr Tawonezvi) to identify some pertinent prejudice.

22. Ms Muna Al-Ali, on behalf of Mr Tawonzvi made it clear to the tribunal that the tenant did believe that prejudice had been suffered. She asserted that the lack of proper consultation and notices served meant that the tenant was unable to judge the work that was proposed both before and during the work. It also meant that he could not object to work that the tenant thought unnecessary such as lighting works. Mr Tawonezvi stated that the scaffolding at the property was in place for such a long period of time that he was forced to take down his private

satellite dish and so had no internet but still had to pay his contract and could not work on his business which he depends upon.

23. On the other hand the landlord's view regarding prejudice was that the consultation requirements in this case are limited to a notice of intention being served and an obligation to have regard to and respond to observations. Consequently the only prejudice was that the tenant has not had an opportunity to make observations.

24. The tribunal was of the view that they could not find significant relevant prejudice to Mr Tawonezvi. There was no relevant evidence before the tribunal that Mr Tawonezvi was required to pay for inappropriate services or had been required to pay more than was appropriate. The tribunal accepted the landlord's submission in this regard to the effect that the only prejudice was the lack of an opportunity to make observation which was insufficient to allow the tribunal to find significant relevant prejudice.

The reasonableness of service charge issues and decision

25. The tribunal is of the view that there are some elements of the service charges that are unreasonable and these elements are particularised in the decision set out above. The witnesses that gave oral evidence before the tribunal were Ms Al-Ali and Laura Jayne Howard, (of 28 Gawsworth Close London E15 1RT), for the applicants and Adam Camp, Ian Philip Haworth and Sean Scott for the respondent. There were several other witness statements in the trial bundles from and for both parties but those witnesses did not attend or did not give oral evidence. In these circumstances the tribunal will note the evidence but can only put such weight upon that evidence as the tribunal considers appropriate bearing in mind the evidence of witnesses not appearing before the tribunal has not been tested in cross-examination.

26. One preliminary issue was the liability to pay the service charge under the terms of the leases. The tribunal took time to consider in detail one lease, 44 Hatfield Road, being the lease of property where Ms Al-Ali is the leaseholder. That lease was granted in 1987 by Newham to a James Andrew Hayden. The lessee's obligation to service charges can be seen at clause 5(2) of the lease. The lessee covenants to pay a proportionate part of the landlords costs of *"repair maintenance renewal and insurance of the estate and the provisions of services....and other heads of expenditure....set out in the fourth schedule...."* The fourth schedule sets out in detail the costs and expenses that the lessee must contribute to the payment therefor by way of service charges. These include *....the expense of maintaining repairing redecorating renewing amending cleaning repointing painting graining varnishing whitening or colouring the estate and all parts thereof...."* Subsequently the same schedule also includes *"The cost of decorating and lighting the passages landings staircases and other parts of the*

estate enjoyed or used by the lessee in common with others and of keeping the other parts of the estate used by the lessee in common as aforesaid and not otherwise specifically referred to in this schedule in good repair and condition"

27. Clearly it can be seen from these lease terms that the lessor has a wide right of recovery for a wide spread of works that they might carry out to the several properties covered by these leases. The leases do not provide for a sinking fund but the lessor can call for an interim payment in advance, (see lease clause 5(2)(g)). The tribunal was satisfied that the works carried out by the respondent would be covered by the lease terms.

28. The applicants raised the issue that some works amounted to improvements. Whilst the word "improvement" does not appear in the lease of 44 Hatfield Road, other leases did specifically mention improvements. (The lease of 28 Gawsworth Close London E15 1RT is an example of an applicant's lease that does specifically cover improvements explicitly). In reply the respondent asserted that "amending" (as included in the fourth schedule) would cover improvements. The tribunal decided that this was a reasonable and common sense interpretation of amending in the provisions of the lease in that to amend could include to improve. (The Chambers Dictionary, 12th Edition; London 2011 defines "amend" as "to free from fault or error; to correct; to improve....").

29. There was also some confusion regarding the repair and replacement of boundary fencing in and around the estate in which the properties were located. Some applicants objected to charges for repairs and renewals to fencing that they asserted did not serve their property and or which were not communal in nature. However, the lease terms do require the lessor to repair and renew "the boundary walls and fences of and in the curtilage," (here meaning an area of land attached to a property and forming one enclosure with it), " of the estate"; which would clearly mean that the lessor was under an obligation to do these works. Therefore, the service charge provisions set out above (see paragraph 26) means the lessees must pay for them. Accordingly the tribunal was satisfied that charges made by the respondent for fencing works were properly payable as part of the service charges for units within this estate.

30. Another issue raised by the applicants was whether the major works were actually carried out. The tribunal was shown evidence of the procedures in place for quality control and audit put in place by the respondent to check that the works were done and done to a satisfactory standard prior to accounts being paid. In the light of this evidence the tribunal was satisfied that the works listed in the respondent's records as major works were indeed performed and carried out by the contractors working for the respondent.

31. A major concern voiced by the applicants was not surprisingly why, to quote from Ms Al-Ali's submission to the tribunal, "the bill was sent to us 5 years after completing the job which we believe does not comply with section 20B of the 1985 Act as it is more than 18 months after the costs were incurred". The law is quite clear. If any of the costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then the tenant shall not be liable to pay the service charge. But if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he or she would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge then the liability to pay the service charges remains.

32. The question the tribunal was required to address was did the respondent issue a notice that complied with the statutory provisions set out above? The two witnesses who gave evidence for the applicants claimed not to have received any such notice within the 18 month period or at all. The respondent asserted that it had indeed issued appropriate 20B notices within the necessary timeframe. For the purposes of the major works the respondent split the affected area into three sections or zones A, B and C. The works were carried out and completed at different stages in each of the three zones.

33. Notices were said to be issued on behalf of the respondent on three different dates in the three zones. Lessees in zone A were sent notices dated 21 October 2010, in zone B on 25 July 2011 and in zone c on 22 February 2012. The respondent confirmed that attached to each such notice letter was a spreadsheet setting out the aggregate total of estimated costs for each block in that particular zone. The respondent therefore says that it has complied with the statutory requirements set out in S.20B.

34. The tribunal was shown copies of examples of the letter notices as well as a copy of the spreadsheet. They appeared to be in a format that would comply with the requirements of the Act. Bearing in mind the provisions in the lease regarding the service of notices, and in particular the application of s.196 of the Law of Property Act 1925, (see paragraphs 16 and 17 above) the respondent maintains that there has been good service of the notices and hence compliance with s. 20B. The local authority relies upon this provision with regard to the service of notices required by statute or the lease. In effect it allows the landlord to hand deliver notices to the lessee at the demised premises. It is also the respondent's evidence that non-resident leaseholders were also sent a copy of relevant notices by recorded delivery post. The tribunal was satisfied that s20B had indeed been complied with and that the demand for payment in 2015 was lawful if criticisable for excessive delay; the delay in invoicing being explained by the final account for the works only being settled in March 2014.

35. The applicants did raise the question of necessity in relation to several items of the major works completed by the respondent. The applicants did raise with the tribunal issues regarding the entrance doors and entry system. Works to the entrance doors were completed twice in roughly two years and as such the tenants felt such works were a duplication and thus really unnecessary. The respondent was not able to provide convincing evidence to the contrary to the tribunal and consequently the tribunal took the view that this work was in part unreasonable. Therefore, the tribunal was of the view that the door works element of the major works should be reduced by £250 per lessee affected by the duplication of works to the doors and entry system.

36. Another issue that came to the attention of the tribunal was in relation to works to the windows at the properties. Property specific work to windows was to be reduced by 75% in each case. This was a reduction conceded and agreed by the respondent (in relation to one of the witnesses for the applicant) largely as a result of a lack of supporting evidence that should have been provided by the lessor to support the service charge claim relating to window works. Therefore the tribunal finds that in each case for each property owned by the witnesses for the applicant there is to be a reduction of 75% from the property specific costs for window works. therefore, in relation to 28 Gawsworth Close, the property owned by the witness Laura Jayne Howard the final account invoice listed "window works to individual flats" and showed a charge of £464.03. It is this sum that is to be reduced by 75%, down to £116.01. Similar reductions are therefore approved for Ms Al-Ali down from £326.66 to £81.66.

37. For all the reasons set out above the tribunal is of the view that the service charges are in part unreasonable and that the amounts should be as set out above. Otherwise in the absence of any evidence from the applicants as to what would be a reasonable sum or sums for the major works the tribunal has no evidential basis for reducing or disallowing the sums demanded by the respondent.

Application for a S.20C order

38. It is the tribunal's view that it is both just and equitable to make an order pursuant to S. 20C of the Landlord and Tenant Act 1985. Having considered the conduct of the parties and taking into account the determination set out above the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act that the costs incurred by the respondent in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenant.

39. With regard to the decision relating to s.20C, the Tribunal relied upon the guidance made by HHJ Rich in *Tenants of Langford Court v Doren*

Limited (LRX/37/2000) in that it was decided that the decision to be taken was to be just and equitable in all the circumstances. The tribunal thought it would not be just to allow the right to claim costs as part of the service charge. The s.20C decision in this dispute gave the tribunal an opportunity to ensure fair treatment as between landlord and tenant in circumstances where costs have been incurred by the landlord and that it would be just that the tenant should not have to pay them by way of the service charge.

40. As was clarified in *The Church Commissioners v Derdabi* LRX/29/2011 the tribunal took a robust, broad-brush approach based upon the material before it. The tribunal took into account all relevant factors and circumstances including the complexity of the matters in issue and all the evidence presented.

41. It was apparent to the tribunal that there were significant timescale issues affecting these major works regarding progress of the works and when and how the service charges would be claimed. Secondly the timing of the claim was excessive. As was noted above, the major works were carried out in 2009/2010 and yet the demands for service charge payments were not made of the lessees until April 2015 up to five or six years later. Any reasonably minded tenant would be taken aback by this inordinate delay and it was clear to the tribunal that this was a major factor that induced the applicants to proceed with their service charges claim.

42. The tribunal is of the view that because the lessor did not manage to make a service charges claim until 2015 and it did not appear to the tenants they were being kept informed of what works were being carried out and when they were to be charged that this is not good practice on the part of a local authority landlord. For all these reasons the tribunal has made this decision in regard to this 20C application.

Name: Judge Professor Robert M. Abbey **Date:** 28 June 2017

Appendix of relevant legislation and rules

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

20B Limitation of service charges: time limit on making demands.

(1)If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2)Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20ZA Consultation requirements

(1)Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
(2)In section 20 and this section—
"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
....
(4)In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.
(5)Regulations under subsection (4) may in particular include provision requiring the landlord—
(a)to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
(b)to obtain estimates for proposed works or agreements,
(c)to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
(d)to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e)to give reasons in prescribed circumstances for carrying out works or entering into agreements.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the

proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 [2013 No. 1169 (L. 8)]

Orders for costs, reimbursement of fees and interest on costs

13.—(1) The Tribunal may make an order in respect of costs only—

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
(i) an agricultural land and drainage case,
(ii) a residential property case, or
(iii) a leasehold case; or
(c) in a land registration case.
or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs—

(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the "paying person") without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—

(a) summary assessment by the Tribunal;
(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the "receiving person");
(c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998(a), section 74 (interest on judgment debts, etc.) of the County Courts Act 1984(b) and the County Court (Interest on Judgment Debts) Order 1991(c) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph

(7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.

Annex - Rights of Appeal

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.